'No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence *at the time when it was committed.'*

Section 26(8):

'Nothing contained in any law in force immediately before the appointed day shall be held to be inconsistent with any of the provisions of this Chapter; and nothing done under the authority of any such law shall be held to be done in contravention of any of these provisions.'

Their Lordships will first express their own opinion as to the effect of these two provisions without recourse to the previous authorities.

Even if s.20(7) were considered in isolation, their Lordships do not consider that s.29 of the Juvenile Law would be inconsistent with its provisions. So far as they related to penalties for criminal offences, they are directed to invalidating laws *passed after an offence has been committed* which increase retrospectively the penalty that may be imposed for that offence."

[Emphasis supplied]

The subsection, assuming it operates retrospectively, is clearly a law which comes within the striking range of Article 7(1) and I would accordingly hold that it is invalidated so far as cases where the offence was committed prior to the date of its coming into force are concerned. It follows, therefore, that I have a discretion here in the matter of sentence, since the subsection in the form it took prior to the amendment is what applies.

I am now prepared to hear any further submissions as to how that discretion should be exercised regard being had to the circumstances of this case.

Order accordingly.

Solicitors: *R. Rajasingam & Co.*

WONG KIM SWEE v. WONG CHEE MUN & ORS.

[O.C.J. (Abdul Razak J.) June 11, 1984]
[Kuala Lumpur — Civil Suit No. C910 of 1983]

Guarantee — Letter of Guarantee — Co-sureties agreed to honour guarantee — Discharge of debt by plaintiff — Claim against defendants for equal share of contribution — Contracts Act 1950, s.99.

The plaintiff together with the first, second, third and fourth defendants became co-sureties to the Bank of Tokyo for the debt of the Big Bear Supermarket Sdn. Bhd., the debtor for the sum of $250,000/—. They held themselves liable to pay to the Bank if the debtor did not do so, under a letter of guarantee. Later, the Bank called upon the defendants as co-sureties to honour their guarantee. The plaintiff duly paid $194,564.78 towards the discharge of the debt then outstanding by virtue of which the guarantee was discharged. He then called upon the defendants to contribute equally towards the amount disbursed by him, but they refused. He then sued each of the defendants for the sum of $49,141.19 as their equal share of contribution and interest.

The plaintiff had also charged his land for $180,000/- and the wife of the first defendant had charged hers for $70,000/- making a total of $250,000/-.

The plaintiff's claim against the first defendant was disallowed by the Senior Assistant Registrar. The plaintiff appealed against the said order.

Held, allowing the appeal: section 99 of the Contracts Act, 1950 makes it quite clear, that if any of the co-sureties had paid the creditor towards the discharge of the debt and obtained a discharge (of which in this case there was no dispute), then the others were equally liable to contribute to the sum paid towards that discharge. If the payment had effected to discharge the first defendant's land as the additional security, it did not alter the defendant's liability to contribute since a discharge of the debt under the guarantee as provided by section 99 had been effected.

CIVIL SUIT.

Philip M.C. Choong for the plaintiff.
S. C. Navarednam for the defendants.

Cur. Adv. Vult.

Abdul Razak J.: The plaintiff together with the first, second, third and fourth defendants became co-sureties to the Bank of Tokyo for the debt of the Big Bear Supermarket Sdn. Bhd., the debtor for the sum of $250,000/. They held themselves liable to pay to the Bank if the debtor did not do so, under a letter of guarantee. Later, the Bank through their solicitors called upon the defendants as co-sureties to honour their guarantee. The plaintiff duly paid $194,564.78 towards the discharge of the debt then outstanding by virtue

of which the guarantee was discharged. He then called upon the defendants to contribute equally towards the amount disbursed by him, but they refused. He then sued each of the defendants for the sum of $49,141.19 as their equal share of contribution and interest. It is to be noted that in addition to the guarantee, other securities were provided by the defendants to secure the debt. The plaintiff charged his land for $180,000/- and the wife of the first defendant her's for $70,000/- making a total of $250,000/-.

The plaintiff applied for summary judgment before the Senior Assistant Registrar against the first defendant for the amount claimed, but it was disallowed. He is now appealing against the order.

It was contended by the plaintiff that under section 99 of the Contracts Act the defendant was liable to contribute. The section reads as follows:

"Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor."

Counsel for the defendant said that the defendants were only liable to contribute if the Bank had called upon the co-sureties to honour their guarantee, but they (the Bank) had not done so. But it seems to me the letter from the Bank speaks for itself that they did call upon the defendants as guarantors to fulfil their obligation. It reads:

"Re: Banking facilities of $250,000/- granted to Big Bear Supermarket Sdn. Bhd.

We act for The Bank of Tokyo Ltd.

We are instructed by our clients that they have granted banking facilities not exceeding in the aggregate $250,000/- together with interest thereon at the rate of 9% per annum with monthly rests to Big Bear Supermarket Sdn. Bhd. (hereinafter called "the Borrower") upon the following securities:

1. Charge dated July 22, 1981 for $180,000/- in respect of the land held under H.S.(D) 5732 Lot No. 5997 Mukim Damansara Daerah Petaling executed by Wong Kim Swee @ Kow Chye (hereinafter called "the First Chargor") in our clients' favour;

2. Charge dated July 22, 1981 for $70,000/- in respect of the land held under Q.T. (R) 40559 P.T. No. 5105 Mukim Sungei Buloh executed by Tan Poh Im (hereinafter called "the Second Chargor") in our clients' favour;

3. Joint and several Guarantee dated June 10, 1981 executed by Ng Chee Ghee, Wong Chee Man, Yap Juang King and Wong Kim Swee (hereinafter collectively called "the Guarantors").

Our further instructions are that the Borrower has exceeded the limit of the banking facilities granted therein and as of December 11, 1981 the total sum of $260,949.55 is owing by the Borrower to our clients.

Take Notice, which we hereby give you, that should you as the Borrower, First Chargor, Second Chargor *and* the *Guarantors* fail to settle the said sum of $260,949.55 together with interest thereon at the rate of 9% per annum with monthly rests from November 27, 1981 to the date of realisation, to our clients within seven (7) days of date hereof, our clients will commence legal proceedings against all of you for the recovery thereof without further notice in which event you will also be liable for costs and interest."
(The emphasis is mine).

The Bank specifically drew the attention of the defendants to their position as chargors as well as guarantors that if they failed to settle the debt, court action would follow. I do not think what they meant to say could be said in clearer terms. The Bank were firmly making it known in fact that they were calling upon *both* the chargors and the guarantors to pay, and that if they did not, they would proceed against either the chargor or the guarantor or both to realize their security. In any case, it seems not to make any difference whether the Bank had called upon the defendants to honour their guarantee or not. Section 99 makes it quite clear, that if any of the co-sureties had paid the creditor towards the discharge of the debt and obtained a discharge (of which in this case there was no dispute), then the others were equally liable to contribute to the sum paid towards that discharge. If the payment had effected to discharge the first defendant's land as the additional security, it therefore must be clearly coincidental and I cannot see how that can alter the defendant's liability to contribute since a discharge of the debt under the guarantee as provided by section 99 had been effected.

In the circumstances, I would allow the appeal and make the order in terms of the Summons-in-Chambers before the Senior Assistant Registrar and costs.

Appeal allowed.

Solicitors: *Philip Choong & Co.; Sulaiman C. Navarednam & Co.*